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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOSEPH ETHERAGE and KIRSTIN
ETHERAGE, and the marital community
thereof,

Plaintiffs,

v.

JOHNNY L. WEST and "JANE DOE"
WEST, and the marital community
thereof,

Defendants.

CASE NO. C11-5091BHS

ORDER SUBSTITUTING
DEFENDANT, VACATING IN
PART PREVIOUS ORDER,
AND GRANTING IN PART
ETHERAGE'S MOTION TO
CLARIFY

This matter comes before the Court on Plaintiffs Joseph and Kirstin Etherage's ("Etherage") Motion to Clarify. Dkt. 23. The Government does not oppose the motion. Dkt. 24.

Etherage requests clarification on two issues in the Court's recent order granting their motion to compel (Dkt. 22): (1) whether Defendant West or the Government is required to respond, and (2) whether the responding party is required to respond to Etherage's Requests for Production 16 &17 or 14 & 15.

First, West is still the named Defendant in this action. Although the Government did file a motion to amend the caption and substitute the United States of America for West (Dkt. 6), the parties requested that the Court terminate that motion (Dkt. 10). Moreover, the parties' caption remains Etherage v. West. The Court, however, will *sua*

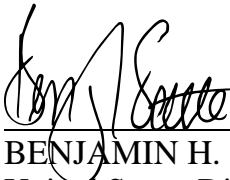
1 *sponte* substitute the United States of America pursuant to 28 U.S.C. § 2679(d)(2) (“the
2 United States shall be substituted as the party defendant”). Therefore, the caption in this
3 action shall reflect this substitution.

4 With regard to the Court’s order granting the motion to compel, the Court requires
5 the Government to respond to the discovery requests because the proceeding is an action
6 against the Government upon certification of the Attorney General or, for the purposes
7 of this action, United States Attorney Jenny Durkin, and the certification was filed
8 January 31, 2011.

9 Second, Etherage asserts that the Court required responses to requests for
10 production that dealt with the chain of command issue instead of the scope of
11 employment issue. The Court agrees and hereby vacates that portion of the order. The
12 Court also grants Etherage’s motion as to their Requests for Production 14 & 15.

13 **IT IS SO ORDERED.**

14 DATED this 6th day of June, 2011.

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18 BENJAMIN H. SETTLE
United States District Judge